

From: James L. Porter , Jr. [porter@PorterSimon.com]
Sent: Tuesday, October 12, 2010 1:35 PM
To: !FHFA REG-COMMENTS
Subject: Guidance on Transfer Fees (No. 2010-N-11)

FHFA, I urge you NOT to support the proposed regulations regarding private transfer fee covenants.

Please OPPOSE any guidance which would undermine the ability of property owners whose properties are burdened with a transfer fee to obtain financing for their property. Imagine the chaos and loss of value that would create.

In our community we have recorded thousands of private transfer fee covenants on residential properties, ALL benefiting charities and non profit organizations like land trusts and community foundations, and homeowner associations, who benefit greatly from the fees. A California statute mandates that any restrictive covenant have a connection to the property, and our transfer fees have that connection.

Furthermore California law mandates NOTICE of any transfer fee covenant with a conspicuous recorded document entitled: Payment of Transfer Fee Required. Civil Code sections 1098 and 1098.5 have that and many other protections for purchasers of property burdened with a covenant. Despite what the naysayers have told you, every buyer of property knows in advance of any recorded fee, which by the way, we call community benefit fees. Such fees are well received in our area because of the many benefits they bring to our community.

Property owners who have such transfer fee covenants recorded against their property should not be punished by the proposed regulation such that they will be unable to obtain financing for their property. The proposal of the realtor group is the wrong 'fix for the alleged problem'.

If you feel you must approve a regulation negatively affecting transfer fee covenants, and I hope you do not, consider these suggestions:

Make any such FHFA regulation prospective only, applying only to transfer fees recorded AFTER your regulation, or better yet,

Make any such FHFA regulation applicable only to transfer fees that benefit the developer that imposed the fee (as opposed to non profits and homeowner associations).

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